

REMARKS

Applicant thanks the Examiner for reviewing the present application, however, Applicant respectfully requests that the finality of the Office Action be withdrawn. The Examiner has made new grounds of rejection. While the arguments presented in the previous Amendment were found persuasive, there was nothing in the Amendment that necessitated the new grounds of rejection, as the only amendments made were moving contents of dependent claims into independent claims. Specifically, Claim 11 had been amended to incorporate the subject matter of claim 13. Claims 1 and 11 have been amended to specify that the honey extender is free of viscosifier and non-nutritional sweetener, by incorporating the subject matter of claim 10. Accordingly, Applicant respectfully requests that the Office Action of February 8, 2007 be considered non-final in the event the case is not found to be allowable.

Currently, claims 1 and 11 have been amended by incorporating the subject matter of Claim 9 which has been canceled without prejudice. As this is only a combination of the claims, intended to simplify issues for appeal, Applicant respectfully requests that this amendment be entered. Care has been taken not to introduce any new matter.

The Present Invention

The present invention is directed to a honey extender that, unexpectedly, can be used to make a honey comprising composition that has taste characteristics that are substantially the same as those of conventional honey. The honey comprising composition with the honey extender of this invention has elevated levels of oligosaccharides with a higher moisture content than honey, and does not display crystallization characteristics for at least about three years at ambient temperature, and has excellent flowability properties. Furthermore, the honey comprising composition with the honey extender of this invention has microbiological stability indistinguishable from that of conventional honey, even with the higher moisture content.

The honey extender, as claimed in Claim 1, comprises:

- a) at least about 7.0% by weight oligosaccharide;
- b) at least about 60.0% by weight corn syrup having a D.E. of at least about 36; and
- c) about 20.0% to about 25.0% by weight water

wherein weight percent is based on total weight of the honey extender; and the honey extender is free of viscosifier and non-nutritional sweetener. See Specification at page 3, lines 13-18; page 5, lines 5-6.

In a second aspect, the present invention is directed to a honey composition that comprises the honey extender according to the first aspect of this invention. As claimed in Claim 11, a honey comprising composition includes:

- a) about 20.0% to about 30.0% by weight honey, based on total weight of the honey comprising composition; and
- b) honey extender comprising:
 - (i) at least about 7.0% by weight oligosaccharide, based on total weight of the honey extender;

(ii) at least about 60.0% by weight corn syrup having a D.E. of at least about 36, based on total weight of the honey extender; and
(iii) about 20.0% to about 25.0% by weight water; and
the honey extender is free of viscosifier and non-nutritional sweetener.
See Specification at page 4, lines 20-22; p. 5, lines 5-8 and 15-16.

Moreover, the honey comprising composition of this invention not only has the taste of conventional honey, but it is approximately 200.0 % cheaper to purchase than honey.

Note, substantially the same taste as conventional honey means that at least one half of the panelists tasting the honey comprising composition comprising the honey extender of this invention cannot distinguish the same from conventional honey.
See Specification at page 4, lines 5-8.

The Present Invention is Not Obvious

Claims 1, 2, 4, 5 and 11 were rejected under 35 U.S.C. 103(a) as being unpatentable over Topalian (U.S. Pat. No. 3,294,552) in view of MMSA. According to the Office Action, Topalian disclose sucrose, 57 % corn syrup having a DE of 24- 60 at a range of about 11% to about 15% and water (col. 9, lines 31-45, lines 55-59).; Topalian fails to disclose a honey extender with corn syrup at about 65%. (Applicants submit that Topalian fails to disclose at least 60 % corn syrup); However, it would be obvious to vary the amount.

Claims 1,3-9, 11, 14, and 15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Topalian (U.S. Pat. No. 3,294,552)in view of Wikipedia.com. According to the Office Action, Topalian discloses 1-30 % honey and an extender; However, Topalian fails to disclose a honey extender with corn syrup at about 65%. (Applicants submit that Topalian fails to disclose at least 60 % corn syrup); about 30-40 % glucose and about 40-50 % fructose as recited in claim 6; less than 3.5 % maltose as recited in claims 7 and 8; about 20-25 % water as recited in Claim 9; and the properties of the honey with the extender as recited in claims 14 and 15.; However, it would be obvious to vary the amount of corn syrup and to achieve the parameters of claims 14 and 15.

Applicant respectfully traverses. None of the cited references describes a honey comprising composition comprising a honey extender wherein the honey comprising composition has the taste and microbiological stability of conventional honey, and does not crystallize for at least about three years at ambient temperature. The present invention achieves unexpected results for at least the following reasons.

Firstly, one skilled in the art would expect that increasing the water content of the honey composition via the addition of the claimed extender would reduce the microbiological stability of the composition. Topalian fails to disclose water at 20-25 % and Wikipedia confirms that natural honey is microbiologically stable due to its moisture content being too low, i.e., under 18 (see p. 1, Para. 3). The microbiological stability of the claimed invention is indistinguishable from honey, while the water content of the overall honey comprising composition, accounting for water content in the Honey and the water content in the honey extender, is greater than 20 %.

Also, one skilled in the art would expect that the honey flavor would be significantly reduced via dilution with the claimed honey extender. However, the taste of the honey composition containing the honey extender was not only indistinguishable from honey but was selected by some consumers as honey when asked to pick out the composition that they thought was real honey.

Additionally, one skilled in the art would expect some crystallization to occur in the product particularly after prolonged storage under ambient conditions. Yet to the contrary the claimed honey composition containing the honey extender showed no crystallization after several years of storage. Topalian is silent regarding crystallization, one skilled in the art would expect that there would be crystallization, contrary to the present claim 14.

Topalian is silent as to the presence of viscosifier and non-nutritional sweeteners in the composition. It would NOT be obvious to one of ordinary skill in the art to expect that these components are not present as instantly claimed. The current claims specify that the honey extender is free of viscosifier and non-nutritional sweetener.

The present invention uses oligosaccharides and sweeteners that are fully metabolizable in preparing a honey extender that is indistinguishable from honey in taste, thickness and flow characteristics but contains more water and exhibits no sugar crystallization over an extended period of time.

Example 3 on page 8 of the Specification demonstrates objective evidence of unexpected results in this regard. The honey comprising compositions prepared according to Examples 1 and 2 of the present invention were microbiologically stable, had substantially the same taste as conventional honey and displayed no sugar crystallization, even in the cap region, after about 4.5 years of storage. In contrast, as shown in Example 4, conventional honey crystallized after about one year. Example 5 demonstrates a unanimous panel as to the taste of the composition of Example 3 being indistinguishable from that of conventional honey.

CONCLUSION

Reconsideration of the rejection is respectfully requested in view of the above claim amendments and remarks. It is respectfully requested that the application be allowed to issue.

If a telephone conversation would be of assistance, Applicant's undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,

/Ellen Plotkin/

Ellen Plotkin
Registration No. 36,636
Attorney for Applicant(s)

201-894-2253